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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 859

JULIUS HARTMANN, AS EXECUTOR UNDER THE LAST WILL AND TESTAMENT OF ANNIE C. GRUN, DECEASED,
Petitioner,

vs.

THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS OF THE UNITED STATES

JULIUS HARTMANN, as Executor under the last will and testament of Annie C. Grun, deceased, prays that a writ of certiorari issue to review the judgment of the Court of Claims of the United States entered in the above entitled cause on May 6, 1946. A motion to vacate the judgment and for new trial was denied on October 7, 1946.

Opinion Below

The opinion of the Court of Claims (R. 53-55) has been officially reported as 106, Court of Claims Reports 686.

Jurisdiction

The judgment of the Court of Court of Claims which was entered on May 6, 1946, became final on October 7, 1946, on denial of plaintiff's motion to vacate the judgment

and for new trial. The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925, as amended (Appendix 1.)

Question Presented

May the plaintiff recover actual damages suffered in breach of contract arising upon the failure of the defendant to perform its contract as set forth in the gold value clause of the First World War Liberty Bonds which expressly provide that the principal and interest of the bonds shall be payable in United States gold coin of the present standard of value (25.8 grains of gold to the dollar), and the defendant sought to pay the bonds in devalued currency (15 5/21 grains of gold to the dollar), where the bonds were owned by a citizen of Switzerland, and at all times held by her at her residence in Lucerne, where the monetary standard of Switzerland and of plaintiff was the gold franc which was in a free gold economy, each one hundred dollar bond falling in value to plaintiff from 518 francs (in terms of the gold value clause) to 309 francs (in terms of the devalued dollar offered in payment) or a loss to plaintiff of $1,053,132 in legal tender currency.

Plaintiff does not seek payment in gold or gold specie, but asks an amount of devalued currency equal to the actual damages suffered.

Summary Statement of the Matters Involved

This is a suit to recover the actual damages suffered by plaintiff due to the breach by defendant of a contract with the plaintiff. The contract breached is set forth in United States Liberty Loan 3½ percent Gold Bonds (R. 16, Exhibit B) and provides that, "the principal and interest of this bond shall be payable in United States Gold Coin of the present standard of value. . . ."

The Court of Claims found (R. 54) that the plaintiff, a citizen and resident of Switerland, is the duly qualified and acting Executor of the Estate of Annie C. Grun, having been appointed as such Executor by the Probate Court of Lucerne, Confederation of Switzerland. Annie C. Grun was a resident and citizen of Switzerland at all times here concerned. She died on October 11, 1934. On May 5, 1930, she became, and until her death remained, the legal and beneficial holder and owner of the United States First Liberty Loan 3½ percent Bonds, in the principal amount of $1,420,000 payable as to principal and interest in United States Gold Coin of the standard of value of June 15, 1917. These bonds were registered on May 5, 1930, in the name of the decedent by the Register of the United States Treasury, and were held by her at her residence in Lucerne, Switzerland. These Liberty Bonds were issued by the defendant on June 15, 1917, by Act of Congress approved April 24, 1917. By the terms of the bonds, defendant pledged that, "The principal and interest on this bond, shall be payable in United States Gold Coin of the present standard value. . . ." The gold dollar consisted of 25.8 grains of gold 9/10ths fine, as provided by Act of Congress, approved March 14, 1900 (31 Stat. L. 45), which was in full force on June 15, 1917, the date that these bonds were issued.

The Congress of the United States enacted a law, approved March 3, 1919, providing that bonds of the United States, while beneficially owned by a *non-resident alien individual,* foreign corporation, partnership or association not engaged in business in the United States, shall be exempt both as to principal and interest from all taxation imposed by the United States, any state, possession or local taxing authority (Appendix 2). Thereby a special public policy of the United States was created to induce non-resi-

dent aliens to become and remain legal and beneficial holders of the bonds, and on which Annie C. Grun relied.

On June 5, 1933 a joint resolution of the 73rd Congress (Public Resolution No. 10) became effective. The Resolution provided that every obligation of the United States shall be discharged dollar for dollar,[1] in devalued currency, and not in gold coin.

On January 30, 1934, the Gold Reserve Act was approved which authorized the Secretary of the Treasury, with the approval of the President, to prescribe conditions under which gold might be, "acquired and held, transported, exported or ear-marked, or held in custody for foreign or domestic account (except in behalf of the United States)". Section 5 of the Act prohibited coinage, paying out or delivery of gold coins by the United States, and that all gold should be formed into bars (48 Stat. 340; Appendix 3).

On January 15, 1934, the President issued an executive order to regulate transactions in foreign exchange, transfer of credit and the export of coins and currency under the Act of Congress approved October 6, 1917, as amended by Section 2 of the Act of March 9, 1933 (Oct. 6, 1917, c. 106, Sec. 5 (G), 40 Stat. 415; Sept. 24, c. 176, Sec. 5, 40 Stat.

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1 "Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. Any such provision contained in any law authorizing obligations to be issued by or under authority of the United States, is hereby repealed, but the repeal of any such provision shall not invalidate any other provision or authority contained in such law. * * * (48 Stat. L. 112.)

966; Mar. 9, 1933, c. 1, Sec. 2, 48 Stat. 1). This executive order #6260 prohibited certain transactions in foreign exchange and the export and withdrawal from the United States of any currency or silver coin by any person within the United States, except under license, but expressly excepted and permitted, subject to regulations, foreign exchange transactions and transfers of credit without a license for a normal, commercial or business requirement, or for the fulfillment of legally enforceable obligations incurred prior to March 9, 1933 (Appendix 4).

On January 31, 1934, the President issued a proclamation by virtue of statute 48 Stat. 342; 49 Stat. 704 reducing the weight or gold content of the dollar from 25.8 grains of gold, 9/10ths fine, to 15-5/21 grains of gold, 9/10ths fine, being a reduction of slightly less than 40.89% of the former gold weight and content of the dollar (Appendix 5; Proclamation No. 2072, Jan. 31, 1934, 48 Stat. 1730, Title 31, Sec. 821 U. S. C. A.) The defendant has since maintained its outstanding currency at parity with this decreased gold standard weight or content. After Public Resolution No. 10 (June 5, 1933) and after the proclamation of January 31, 1934, reducing the gold content of the dollar, William P. Maloney, acting as the duly authorized agent of Annie C. Grun, made demand upon the defendant for the principal and interest of her said United States First Liberty Loan Gold Bonds in gold coin of the United States of the weight in fineness of June 5, 1917, or its equivalent, and thereafter plaintiff made a further demand upon defendant for the payment of principal and interest of said bonds in gold, or its equivalent, as aforesaid, and protested against the failure, refusal and omission of the defendant to make such payments, and to the repudiation, renunciation, annulment, abrogation and refusal to abide by the provisions in the contract providing for payment in gold coin, which provision was the property of Annie C. Grun and her estate.

After repeated similar demands on behalf of Annie C. Grun, aforesaid, the defendant on October 4, 1934 gave final and definite notice that the defendant would apply Public Resolution 10 (June 5, 1933) to the United States First Liberty Loan 3½% Gold Bonds owned by non-resident alien citizen (R. 54), and thereby refused to make payment of the bonds in gold coin or its equivalent according to the tenor and effect of said bonds.

On or about April 22, 1935, the Treasury Department gave notice by means of Department Circular No. 535 that it would call for redemption, on June 15, 1935, all outstanding United States First Liberty Loans 3½% Bonds for payment, but not in gold coin (R. 54). Pursuant to that notice, the defendant did take the aforesaid 3½% Liberty Bonds at par and required non-resident alien citizens who were beneficial owners of the bonds to receive legal tender currency of the then diminished value[2] (R. 54).

The bonds were issued by the defendant under date of June 15, 1917. Then, and at all times in this proceeding concerned, the Swiss gold franc has been the standard unit of monetary value of Switzerland and consisted of .2903225 grams or about 4.48029 grains of gold 9/10ths fine, and equal at par to approximately 19.295 cents of the United States gold dollar of the standard of value of June 15, 1917. On June 15, 1917 and continuously to January 31, 1934, the standard unit of monetary value of $1.00 of the United States remained equal at par to approximately 5.18 Swiss gold francs (R. 8).

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[2] That the Plaintiff was entitled to accept partial payment under protest, make demand and file suit for the balance, she having reserved her rights thereto, was acknowledged in the Court of Claims decision in treating the question as one of substance. The point was fully argued below (R. 43-46).

Gold was in a free market in Switzerland through the time that the bonds were called. Gold coin of the weight and fineness specified in the bonds had a universal cash market value throughout the world, but with slight differences in the rate of exchange for transmission from the United States to other parts of the World. Prior to the Presidential proclamation of January 31, 1934, the fair cash market value of these First Liberty Loan 3½ Bonds in gold as agreed and in Switzerland was 518 Swiss gold francs per $100 principal amount of said bonds. After said Presidential proclamation, the fair, cash market value of the bonds was 309 Swiss gold francs per $100 principal amount, a loss to plaintiff of 209 Swiss francs per $100 bond. The decreased market price of the bonds remained constant until the date of the calling and taking of said bonds on June 15, 1935 (R. 8-9).

$1,523,400 in United States gold coin of the standard of value as existed on June 15, 1917 was worth on January 31, 1934, the date of the Presidential proclamation, to and including June 15. 1935, the date of redemption of the bonds, and is now worth $2,572,533 in legal tender currency of the United States of the standard of value proclaimed in the Presidential proclamation of January 31, 1934. Likewise, the value of $1,420,000 principal amount of said bonds, and $103,400, being interest due, or $1,523,400, payable in gold coin of the standard of June 15, 1917, likewise was and still is $2,572,533 in legal tender currency of the United States of the standard of value proclaimed by said Presidential proclamation (R. 9). The plaintiff suffered a loss of the difference in value, which is $1,053,132 in devalued currency.

Specification of Errors to Be Urged

The Court of Claims erred:

(1) In holding that plaintiff suffered no damage by being paid the nominal amount of the bonds in depreciated currency.

(2) In failing to hold that the plaintiff is entitled to receive an amount of depreciated dollars equivalent in value to the gold coin payment guaranteed by the bonds.

(3) In failing to follow the decision of this Court in *Perry* v. *United States,* 294 U. S. 330.

(4) In failing to find that plaintiff suffered damages different than Perry in *Perry* v. *United States,* 294 U. S. 330.

(5) In failing to find that the Joint Resolution of June 5, 1933, was void respecting the obligations of the defendant, itself, and plaintiff's bonds were such obligations.

(6) In confusing the power of the defendant to control the flow of gold with the obligation of the defendant to pay damages for breach of contract.

(7) In confusing the law applicable to the obligations of private persons and private corporations with the law applicable to obligations of the defendant, itself.

(8) In erroneously considering the present action, which is one for damages in breach of contract, as an action to recover gold specie, for which there is absolutely no claim in the case.

Summary of Reasons for Granting the Writ

I

The Defendant Has Consented to Be Sued

Julius Hartmann v. *United States,* 86 Court of Claims Reports 579;

49 Stat. At Large, 939 (Appendix 6 here).

II

The Liberty Loan Gold Bond Was a Binding and Enforceable Contract Between the Plaintiff and the Defendant

(a) The defendant acted in a proprietory capacity.

Perry v. *U. S.,* 294 U. S. 330.

(b) The purpose of the gold clause was to prevent loss by fluctuation of currency.

Perry v. *U. S.,* 294 U. S. 330.

(c) The defendant may not repudiate its own legal debt to plaintiff's loss.

Perry v. *U. S.,* 294 U. S. 330, at Page 348;

Norman v. *Baltimore & Ohio Railroad Co.,* 294 U. S. 240.

(d) The money power cannot be used by defendant to repudiate its own obligations.

Perry v. *U. S.,* 294 U. S. 330, at Pages 350 and 351;

Sinking Fund cases, 99 U. S. 700, 718, 719.

(e) The amendments to the United States Constitution prevent repudiation of the contract.

Section 8, Article I, U. S. Constitution;

Perry v. *U. S.,* 294 U. S. 330, at Page 354;

U. S. Constitution, 5th Amendment;
Louisville Bank v. *Radford,* 295 U. S. 555;
Norman v. *Baltimore & Ohio Railroad Co.,* 294 U. S. 240, at Page 381;
Russian Volunteer Fleet v. *U. S.,* 282 U. S. 481;
Becker Steel Co. v. *Cummings,* 296 U. S. 74;
U. S. v. *Lynah,* 188 U. S. 445.

(f) The defendant's control of gold does not excuse payment of damages for breach of contract.

Perry v. *U. S.,* 294 U. S. 300, and also Pages 350, 354;
Feist v. *Societe Intercommunale Belge d'Electricite* (1934), A. C. 161, 170-173;
Serbian and Brazilian Bond cases, P. C. I. J., Series A., Nos. 20-21, Pages 32-34, 109-110.

III

(a) *The Court of Claims Erred in Holding That the Only Difference Between the Perry Case and This Case Is That Annie C. Grun Was a Non-Resident Alien.*

48 Stat. at Large, 817, at Page 834, May 30, 1934;
48 Stat. at Large, 466, Mar. 26, 1934 (Appendix 7, here);
Perry v. *U. S.,* 294 U. S. 330;
Bronson v. *Rhodes,* 74 U. S. 229;
Butler v. *Horwitz,* 74 U. S. 258.

(b) *The Court of Claims Erred in Holding That American Law Does Not Require the Defendant to Pay Plaintiff's Damages for Breach of Contract.*

Perry v. *U. S.,* 294 U. S. 330;
Uebersee Finanz-Korporation Aktien Gesselschaft v. *Rosen, et al.,* 83 Fed. (2), 225;
Compania de Inversiones Internacionales v. *Industrial Mortgage Bank of Finland,* 269 N. Y. 22;
Bethlehem Steel Co. v. *Zurich General Accident & Liability Ins. Co.,* 307 U. S. 265.

(c) *The Court of Claims Erred in That This Is an Action to Recover Damages for a Breach of Contract and Not One to Recover Gold Specie.*

Perry v. *U. S.* 294 U. S. 330;

The British-American Tobacco Co., Ltd. v. *Federal Reserve Bank,* 104 Fed. (2) 652; 105 Fed. (2) 935;

Bakewell v. *U. S.,* 110 Fed. (2) 564;

Becker Steel Co. v. *Cummings,* 296 U. S. 74;

Russian Volunteer Fleet v. *United States,* 282 U. S. 481;

United States v. *Lynah,* 188 U. S. 445.

Reasons for Granting the Writ

I

The Defendant Has Consented to Be Sued

The defendant is a sovereign and may not be sued without its consent. But the defendant did give consent by virtue of which this case is properly pending (*Julius Hartmann* v. *United States,* 86 C. Cls. 579). The defendant has since withdrawn consent for other claims of this nature to be filed, without affecting the validity of these proceedings. This case is the only pending suit against the defendant concerning gold clause legislation, and none others may be filed (49 Stat. at Large 939, Appendix 6, here).

II

The Liberty Loan Gold Bond Was a Binding and Enforceable Contract Between the Plaintiff and the Defendant.

(a) The defendant acted in a proprietary capacity.

When a sovereign contracts in its proprietary capacity, it is responsible the same as private persons for breach of

agreement and damages. The defendant did so act in a proprietary capacity in respect to these Liberty Loan Gold Bonds. As Chief Justice Hughes said, writing for the Court in *Perry* v. *United States,* 294 U. S. 330, a case involving Liberty Loan Gold Bonds of identical gold clause:

> "When the United States, with constitutional authority, makes contracts, it has rights and incurs responsibilities similar to those of individuals who are parties to such instruments. There is no difference, said the Court in United States *v.* Bank of the Metropolis, 15 Pet. 377, 392, 10 L. ed. 774, 779, except that the United States cannot be sued without its consent. See, also, the Floyd Acceptances (Pierce *v.* United States) 7 Wall. 666, 675, 19 L. ed. 169, 173; Cooke *v.* United States, 91 U. S. 389, 396, 23 L. ed. 237, 242. In Lynch *v.* United States, 292 U. S. 571, 580, 78 L. ed. 1434, 1441, 54 S. Ct. 840, with respect to an attempted abrogation by the Act of March 20, 1933 (48 Stat. at L. 8, 11, chap. 3, U. S. C. title 38, Sec. 701) of certain outstanding war risk insurance policies, which were contracts of the United States, the Court quoted with approval the statement in the Sinking Fund Cases, 99 U. S. 700, 25 L. ed. 496, supra, and said: 'Punctilious fulfillment of contractual obligations is essential to the maintenance of the credit of public as well as private debtors.' "

The law is, therefore, well settled that the Liberty Loan Gold Bonds represented a binding and solemn obligation of the defendant, and that the defendant is liable for all damages arising upon its breach of contract.

(b) The purpose of the gold clause was to prevent loss by fluctuation of currency.

The defendant solemnly promised to pay its debts, saying, "The principal and interest of (these bonds) shall be

payable in United States gold coin of the present (1917) standard of value . . ." A contract must be fairly read according to the intention of the parties. Prior to the gold clause legislation of 1933, a creditor of the defendant may have called for payment in accordance with the simple English of the Gold Bond, "in United States gold coin." These simple and clear words needed no construction then, but if they need construction now, clearly the purpose of this provision is not in doubt. In *Perry* v. *United States*, 294 U. S. 330, a case involving a Fourth Liberty Loan Gold Bond of identical gold clause as here involved, Chief Justice Hughes, speaking for the Court said:

> "This obligation must be fairly construed. The 'present standard of value' stood in contradistinction to a lower standard of value. The promise obviously was intended to afford protection against loss. That protection was sought to be secured by setting up a standard of measure of the Government's obligation. We think that the reasonable import of the promise is that it was intended to assure one who lent his money to the Government and took its bond that he would not suffer loss through depreciation in the medium of payment" (P. 348).

There can be no doubt, therefore, as to the measure of the defendant's debt to the plaintiff. A true performance of the contract requires either the payment of gold coin of the standard and fineness of 1917, or its equivalent in depreciated currency, and this is what the plaintiff demanded. But, at all events, the measure of defendant's obligation is made certain.

In any medium of money or currency that the defendant may seek to use to pay the debt, the amount must be equivalent to the value of the gold coin specified in these Liberty Loan Gold Bonds, where payment in a lesser sum would cause actual damage to the plaintiff.

(*c*) ***The defendant may not repudiate its own moral and legal debt to plaintiff's Loss.***

The defendant may not relieve itself of this contract and thereby cause damage to the plaintiff. The solemn contract of the defendant as represented by the First Liberty Loan Gold Bonds is on a different footing than the agreements of States, Municipalities and private parties over which the Congress has greater powers of control.

Chief Justice Hughes, speaking for the Court in *Perry* v. *United States,* 294 U. S. 330, said (at Page 348):

> "The bond in suit differs from an obligation of private parties, or of States or municipalities, whose contracts are necessarily made in subjection to the dominant power of the Congress. Norman *v.* Baltimore & O. R. Co., 294 U. S. 240, 79 L. ed. (adv. 417), 55 S. Ct. 407, decided this day."

In the case of *Norman* v. *Baltimore and Ohio Railroad Co.,* 294 U. S. 240, this proposition was fully affirmed. The court held that private contracts must necessarily be entered into subject to the constitutional power of government to limit or deny. But the solemn contract of the defendant cannot be repudiated by its own subsequent legislation to the damage of the plaintiff. So holding, the court said in *Perry* v. *United States,* 294 U. S. 330:

> "The bond now before us is an obligation of the United States. The terms of the bond are explicit. They were not only expressed in the bond itself, but they were definitely prescribed by the Congress. The Act of September 24, 1917, both in its original and amended form, authorized the moneys to be borrowed, and the bonds to be issued, 'on the credit of the United States' in order to meet expenditures needed 'for the national security and defense and other public purposes authorized by law.' 40 Stat. at L. 288, chap. 56, 40 Stat. at L. 503, chap. 44, U. S. C. title 31, 752.

The circular of the Treasury Department of September 28, 1918, to which the bond refers 'for a statement of the further rights of the holders of bonds of said series' also provided "that the principal and interest 'are payable in United States gold coin of the present standard of value.' P. 348. (The congressional act of the same import covering the United States Liberty Gold Bonds in suit is 40 Stat. at L. 35.)" (Appendix 2).

(*d*) ***The money power cannot be used by defendant to repudiate its own obligations.***

The suggestion of "money power" in a statute does not strike down the rest of the constitution. There is no such tyranny in the constitution. The power of the defendant to regulate the value of money does not extend, directly or indirectly, to repudiation of its debts to the plaintiff's damage. Chief Justice Hughes, in *Perry* v. *United States*, 294 U. S. 330, said:

> "There is no question as to the power of the Congress to regulate the value of money, that is, to establish a monetary system and thus to determine the currency of the country. The question is whether the Congress can use that power so as to invalidate the terms of the obligations which the government has theretofore issued in the exercise of the power to borrow money on the credit of the United States. In attempted justification of the Joint Resolution in relation to the outstanding bonds of the United States, the Government argues that earlier Congresses could not validly restrict the 73rd Congress from exercising its constitutional powers to regulate the value of money, borrow money, or regulate foreign and interstate commerce; and, from this premise, the Government seems to deduce the proposition that when, with adequate authority, the Government borrows money and pledges the credit of the United States, it is free to ignore that pledge and alter the terms of its obligations in case a later Congress finds their fulfillment inconvenient.

The Government's contention thus raises a question of far greater importance than the particular claim of the plaintiff. On that reasoning, if the terms of the Government's bond as to the standard of payment can be repudiated, it inevitably follows that the obligation as to the amount to be paid may also be repudiated. The contention necessarily imports that the Congress can disregard the obligations of the Government at its discretion and that, when the Government borrows money, the credit of the United States is an illusory pledge. (Page 350)."

The credit of the United States is not an illusory pledge.

"We do not so read the Constitution. There is a clear distinction between the power of the Congress to control or interdict the contracts of private parties when they interfere with the exercise of its constitutional authority, and the power of the Congress to alter or repudiate the substance of its own engagements when it has borrowed money under the authority which the Constitution confers. In authorizing the Congress to borrow money, the Constitution empowers the Congress to fix the amount to be borrowed and the terms of payment. By virtue of the power to borrow money 'on the credit of the United States,' the Congress is authorized to pledge that credit as an assurance of payments as stipulated,—as the highest assurance, the Government can give, its plighted faith. To say that the Congress may withdraw or ignore that pledge is to assume that the Constitution contemplates a vain promise, a pledge having no other sanction than the pleasure and convenience of the pledgor. This Court has given no sanction to such a conception of the obligations of our Government" (Pages 350-1).

In considering this vital question, both of morals and of law, the Court said that:

"The binding quality of the obligations of the Government was considered in the Sinking Fund Cases,

99 U. S. 700, 718, 719, 25 L. ed. 496, 501 . . . The Court said:

> 'The United States are as much bound by their contracts as are individuals. If they repudiate their obligations, it is as much repudiation, with all the wrong and reproach that term implies, as it would be if the repudiator had been a State or a municipality or a citizen.'

"When the United States, with constitutional authority, makes contracts, it has rights and incurs responsibilities similar to those of individuals who are parties to such instruments. There is no difference, said the Court in United States *v.* Bank of the Metropolis, 15 Pet. 377, 392, 10 L. ed. 774, 779, except that the United States cannot be sued without its consent. See also, The Floyd Acceptances (Pierce *v.* United States) 7 Wall. 666, 675, 19 L. ed. 169, 173; Cooke *v.* United States, 91 U. S. 389, 396, 23 L. ed. 237, 242. In Lynch *v.* United States, 292 U. S. 571, 580, 78 L. ed. 1434, 1441, 54 S. Ct. 840, with respect to an attempted abrogation by the Act of March 20, 1933 (48 Stat. at L. 8, 11, chap. 3, U. S. C. title 38, 701) of certain outstanding war risk insurance policies, which were contracts of the United States, the Court quoted with approval the statement in the Sinking Fund Cases, 99 U. S. 700, 25 L. ed. 496, *supra,* and said 'Punctilious fulfillment of contractual obligations is essential to the maintenance of the credit of public as well as private debtors" (P. 351-352).

(*e*) *The Amendments to the Constitution prevent repudiation of the contract.*

The Federal Government is a Government of delegated powers. The Amendments to the Constitution are express limitations on the powers previously granted. The Fourteenth Amendment which provides that, "The validity of the public debt of the United States, authorized, by law . . . shall not be questioned," expressly limits all previous provisions, including the one relative to the monetary

powers (Sec. 8, Art. I). The bonds in suit represent a public debt which may not be questioned (*Perry* v. *United States*, 294 U. S. at p. 354).

Nor may the Congress act to impair its own contracts. The Fifth Amendment is a restraint on the Federal Government. "(Nor) shall private property be taken for public use without just compensation." The plaintiff had a contract, a property right to gold coin (or at least to the equivalent measured thereby) in accordance with the terms of the bond. The Fifth Amendment commands that, however great the Nation's need, private property shall not be taken even for a wholly public use without just compensation (*Louisville Bank* v. *Radford*, 295 U. S. 555). The defendant took that gold coin from the plaintiff, and appropriated it to other uses for the defendant's benefit. The plaintiff's bond—now lacking the measure of gold—fell in value. By repudiating its gold clause obligations, the defendant profited thereby in the sum of $2,800,000,000 (Dissenting opinion *Norman* v. *Baltimore & O. R. Co.*, 294 U. S. 240 at p. 381). The measurs of damage here is the loss to the plaintiff and is based upon the value of the bonds at the time that the defendant so acted (*Russian Volunteer Fleet* v. *U. S.*, 282 U. S. 481). The plaintiff is a friendly alien and fully entitled to the protection of the Fifth Amendment. (*Becker Steel Co.* v. *Cummings*, 296 U. S. 74; *Russian Volunteer Fleet* v. *United States*, 282 U. S. 481; *United States* v. *Lynch*, 188 U. S. 445.) The plaintiff lost thereby the difference between the gold value, as guaranteed in the bonds, and the nominal amount of the bonds in legal tender devalued dollars. The loss is not theoretical. The loss is actual, not only as shown by the debased value of the bonds on the Swiss market but as actually suffered by the plaintiff (R. 8-9).

(f) The defendant's control of gold does not excuse payment of damages for breach of contract.

We agree that the defendant may control gold. We do not seek payment in gold, and let us not obscure the true issue. We merely seek an amount of devalued currency measured by the gold standard guaranteed by the bond contract. The action here is for damages for breach of contract, not for gold specie. The defendant did solemnly promise to pay the bonds in gold coin of the standard of 1900, but the defendant did not perform that promise. The question is, must the defendant pay plaintiff's actual damages for breach of agreement in failing to pay in gold? The answer is in the affirmative. (*Perry* v. *United States*, 294 U. S. 330.) There is a gross distinction between the power of Congress under the Constitution to regulate the use of gold, control the contracts of States, municipalities and private persons and the claimed power of the defendant under the Constitution—and in the name of monetary control—to repudiate the Government's own solemn obligations. (*Perry* v. *U. S.*, 294 at p. 350.) The money power is not a tyrant, striking down all other constitutional provisions. To pay its gold clause bonds dollar for dollar in devalued currency, the defendant must rest on the Joint Resolution, and that, so far as the power of the Government to repudiate its own bonds is concerned, has been held unconstitutional in *Perry* v. *United States*, 294 U. S. 330, the Court saying (p. 354):

> "We conclude that the Joint Resolution of June 5, 1933, in so far as it attempted to override the obligation created by the bond in suit, went beyond the Congressional power."[3]

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[3] Justices McReynolds, Van Devanter, Sutherland, and Butler did not dissent from the finding of the Court that the Joint Resolution was unconstitutional, Mr. Justice McReynolds, writing for them, said:

"Just men regard repudiation and spoiliation of citizens by their sovereign with abhorrence; but we are asked to affirm that the Con-

Not one of the cases cited in the Court of Claims decision authorizes the defendant to repudiate its own obligation and cause damage without compensating the injured party. The *Perry* case clearly requires payment to plaintiff for the actual damages suffered.[4] Each and every other case cited involved private persons; not one recognized or gave blessing to a repudiation by the defendant of its pledge to pay the bonds according to their terms in gold coin to the damage of the injured holder. The fact that the defendant had the power to compel private persons to turn gold into the treasury does not mean that the defendant may repudiate its debts by failing to pay in gold, without responding in damages. The contracts of private persons and those of the defendant are on different footing, and expressly so held by the United States Supreme Court, *Perry* v. *United States*, 294 U. S. 330. The clause is to be treated as a gold value clause (*Feist* v. *Societe Intercommunale Belge d'Electricite*, (1934) A. C. 161, 170-173; *Serbian and Brazilian Bond* Cases, P. C. I. J., series A., Nos. 20-21, pp. 32-34, 109-110). The defendant should pay plaintiff's damages in

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stitution has granted power to accomplish both. No definite delegation of such a power exists; and we cannot believe the farseeing framers, who labored with hope of establishing justice and securing the blessings of Liberty, intended that the expected government should have authority to annihilate its own obligations and destroy the very rights which they were endeavoring to protect. Not only is there no permission for such actions; they are inhibited. And no plenitude of words can conform them to our charter" (p. 362).

"This Resolution was not appropriate for carrying into effect any power entrusted to Congress" (p. 376).

[4] In *Nortz* v. *United States* (294 U. S. 317). The Supreme Court held that Nortz suffered no damage. There, no issue as to whether or not the Government could refuse to pay in gold was actually ever raised or determined, for Nortz concurred and did not dispute the power of the Government "to appropriate to the government outstanding gold. . . ." "The question plaintiff presents is thus simply one of just compensation" (p. 328). And since Nortz surrendered his gold certificate before the dollar was devalued, he got currency still on a parity with the gold standard of value and sustained no actual loss (p. 329).

legal tender currency equal to the value of the gold as defined and guaranteed in these Liberty Loan Gold Bonds. The Joint Resolution purportedly allowing gold clause obligations to be paid dollar for dollar in devalued currency is void as to the defendant's own obligations (*Perry* v. *United States* 294 U. S. 330).

III

The decision of the Court of Claims is based upon three statements: (a) that plaintiff like Perry in *Perry* v. *United States* suffered no damage; this we have shown to be wrong; (b) that plaintiff is subject to American law, which we do not dispute; and (c) that the defendant, in its control of gold can deny gold to the plaintiff, an irrelevant matter, as we seek no gold. We shall examine each statement individually.

(a) *The Court of Claims erred in holding that "the only difference between the Perry case and this case is that Annie C. Grun was a non-resident alien."*

(1) In the *Perry* case, the Supreme Court held that the United States could not violate its contracts as represented by the Gold Clause Bond, what Chief Justice Hughes called, "its plighted faith", without paying damages for the breach, but that Perry had as much purchasing power after the Joint Resolution and devaluation of the dollar as he had before, and therefore suffered no actual damage. This was because there was just one money standard for Perry. His purchasing power was not decreased, since the value of his bonds to him, the devalued currency that he would receive in payment of the bonds and the prices that he paid in his necessary daily purchases were all on the same devalued basis, and he therefore suffered no loss.

(2) In the present case, Annie C. Grun and plaintiff suffered great loss in purchasing power by the Joint Resolution and devaluation of the dollar, since the defendant wanted to pay her the nominal amount of the bonds on a devalued basis (15 5/21 gold grains to each dollar worth of the bonds) while the prices which she had to pay for her necessary daily purchases at her home in Switzerland, that is, "her purchasing power", and the value of the bonds to her, were still in the same ratio to the undevalued gold standard basis for payment guaranteed in the bond contract (25.8 gold grains to each dollar worth of the bonds). Such a situation caused obvious loss to plaintiff and discriminated against her, a friendly alien, who held our bonds in a time of national need. Prior to the Joint Resolution and devaluation of the dollar, Annie C. Grun had 5.18 Swiss gold francs for every dollar's worth of the bonds. After, Annie C. Grun and plaintiff had merely 3.09 Swiss gold francs for every dollar's worth of the bonds, a loss of 2.09 Swiss francs for every dollar's worth of the bonds. Here is a loss of purchasing power in the sum of 2.09 francs for every dollar's worth of the bonds! The Congress of the United States recognized this clear loss. A statute was passed, "to authorize annual appropriations to meet losses sustained by officers and employees of the United States in foreign countries due to appreciation of foreign currencies in their relation to the American dollar. . . ." (48 Stat. L. 817 at P. 834, May 30, 1934, and a previous Act, 48 Stat. L. 466, March 26, 1934.) Appendix 7 here. Switzerland was such a country. The Supreme Court has decided that damages should be allowed where a contract provides for one standard of payment and, instead, payment is attempted in a devalued standard (*Bronson* v. *Rhodes*, 74 U. S. 229; *Butler* v. *Horwitz*, 74 U. S. 258).

(3) Before the Joint Resolution and devaluation, gold had been withdrawn from circulation in the United States. At all times in the present case, gold was in a free market in Switzerland, and the exchange value of the Swiss franc was on a gold value basis. The gold clause provisions of the bond were written to avoid loss to a plaintiff in this very situation. As Chief Justice Hughes said in the *Perry* case:

> "This obligation must be fairly construed. The 'present standard of value' stood in contradistinction to a lower standard of value. The promise obviously was intended to afford protection against loss. That protection was sought to be secured by setting up a standard of measure of the Government's obligation. We think that the reasonable import of the promise is that it was intended to assure one who lent his money to the Government and took its bond that he would not suffer loss through depreciation in the medium of payment" (P. 348).

This legal and moral principle has long been established in our law (*Bronson* v. *Rhodes*, 74 U. S. 229; *Butler* v. *Horwitz*, 74 U. S. 258).

The *Perry* case expressly held that the defendant is obligated to pay the actual damages caused by the breach of contract in failing to pay the amount of money measured by the gold clause in the bonds. (We do not and never did insist on payment in gold, but, rather, in an amount of legal tender equal to the value of the gold coin set forth in the bond.) Since plaintiff has suffered actual damages, plaintiff is entitled to be compensated. (*Perry* v. *United States*, 294 U. S. 330.)

(b) *The Court of Claims erred in holding that American law does not require the defendant to pay plaintiff's damages for breach of contract.*

(1) We need not dispute the statement of the Court of Claims decision that the bond was issued and payable in the United States and subject to American law. Nor need we dispute the statement in the Court of Claims decision that, "an Alien who acquires a bond issued in this country under and subject to American law becomes, so far as the bond is concerned, subject to such law to the same extent as an American citizen." The important question becomes, then: What is the American law?

The only law on which defendant can hope to escape legal liability for breach of its moral and legal promise in the bond is the Joint Resolution. The United States Supreme Court held that Resolution unconstitutional and void in so far as the defendant has attempted to override its own obligations without paying damages to the bond owner, saying:

> "We conclude that the Joint Resolution of June 5, 1933, in so far as it attempted to override the obligation created by the bond in suit, went beyond the congressional power" (*Perry* v. *United States*, 294 U. S. 330).

The Supreme Court then said that actual damages were recoverable for the breach of contract, but that Perry suffered no damages as he had as much purchasing power after as before the Joint Resolution and devaluation of the Dollar. Perry's purchasing power was in the Untied States with devalued dollars where all prices were on the same standard of devalued dollars and he therefore suffered no loss. Plaintiff, however, suffered a reduction in purchasing power, as he lost 2.09 francs for each dollar's worth of the bond (*Perry* v. *United States*, 294 U. S. 330).

(2) The decisions cited in the opinion of the Court of Claims do not govern this case; they are no authority whatsoever for allowing the defendant to escape paying plaintiff's damages for breach of contract.

Uebersee Finanz-Korporation Aktien Gesselschaft v. *Rosen, et al.*, 83 Fed. (2) 225, 230, cited in the decision, does not apply here. That case merely held that the United States had the power to require that gold be surrendered to the treasury, which we do not deny. But the present case is an action for breach of contract, and is not an action to recover gold specie, and the *Perry* case clearly held that when the defendant used its power to prevent payment in gold, which was contrary to the gold clause contract, the actual damages arising thereon for the breach of contract must be compensated to plaintiff (294 U. S. 330).

Compania de Inversiones Internacionales v. *Industrial Mortgage Bank of Finland,* 269 N. Y. 22, 198 N. E. 617, and *Bethelhem Steel Co.* v. *Zurich General Accident & Liability Ins. Co.,* 307 U. S. 265, cited in the decision, were actions between private persons to recover the value of gold clauses in bonds issued by private persons. The Courts in those cases held that the bonds which had been issued by private persons were subject to the Joint Resolution, but the United States Supreme Court in *Perry* v. *United States,* said that the government, the defendant here, could not use its legislative power to escape paying damages for breaching the obligations which it had previously created by its legislative power. The Court said:

> "The bond in suit differs from an obligation of private parties, or of States or Municipalities, whose contracts are necessarily made in subjection to the dominant power of the Congress. Norman *v.* Baltimore & O. R. Co., 294 U. S. 240, 79 L. Ed. (Adv. 417) 55 S. Ct. 407, decided this day. The bond now before us is an

obligation of the United States. The terms of the bond are explicit. They were not only expressed in the bond itself, but they were definitely prescribed by the Congress. . . . There is no question as to the power of the Congress to regulate the value of money, that is, to establish a monetary system and thus to determine the currency of the Country. The question is whether the Congress can use that power so as to invalidate the terms of the obligations which the government has theretofore issued in the exercise of the power to borrow money on the credit of the United States. . . . (T)he Government seems to deduce the proposition that when, with adequate authority, the Government borrows money and pledges the credit of the United States, it is free to ignore that pledge and alter the terms of its obligations in case a later Congress finds their fulfillment inconvenient. The Government's contention thus raises a question of far greater importance than the particular claim of the plaintiff. On that reasoning, if the terms of the Government's bond as to the standard of payment can be repudiated, it inevitably follows that the obligation as to the amount to be paid may also be repudiated. The contention necessarily imports that the Congress can disregard the obligations of the Government at its discretion and that, when the Government borrows money, the credit of the United States is an illusory pledge.

"We do not so read the Constitution. There is a clear distinction between the power of the Congress to control or interdict the contracts of private parties when they interfere with the exercise of its constitutional authority, and the power of the Congress to alter or repudiate the substance of its own engagements when it has borrowed money under the authority which the constitution confers. . . . To say that the Congress may withdraw or ignore the pledge is to assume that the Constitution contemplates a vain promise, a pledge having no other sanction than the pleasure and convenience of the pledgor. This Court has given no sanction to such a conception of the obligations of our Government."

The above cases, therefore, are no authority for sustaining defendant's motion to dismiss, as they do not apply to the Bonds in suit, obligations of the United States (*Perry* v. *United States*, 294 U. S. 330).

(*c*) *The Court of Claims erred in that this is an action to recover damages for breach of contract and not one to recover gold specie.*

The third point made in the Court of Claims decision is that, "the only legal use which plaintiff could have made of the gold dollars of the standard of value prior to or subsequent to the devaluation proclamation would have been to surrender them to the Treasury in return for current legal tender currency."

This is absolutely irrelevant to the issues of the case. We do not seek gold coin; we seek the recovery of actual damages in devalued currency for the breach of contract. Gold was taken out of circulation before the bonds were called (*Perry* v. *United States*, 294 U. S. 330). Gold became academic before the bonds were called, except to measure the debt. We do not dispute the power of Congress to control gold. The *Perry* case expressly acknowledges this control of gold to be in Congress, but, says the *Perry* case, Congress must pay the actual damages which result to plaintiff when that gold control was used to repudiate the bonds of the United States to plaintiff's actual damage. *The British-American Tobacco Co.*, v. *Federal Reserve Bank*, 104 F. (2) 652; 105 R. (2) 835 (an action for conversion) and *Bakewell* v. *United States*, 110 Fed. (2) 564, cited in the decision, do not apply. The *British-American Tobacco* case, *supra*, involved the power of Congress to control the circulation of gold, which we do not deny, and did not concern the repudiation by the United States of its own obligations. In the *Bakewell* case, *supra*, no damage

was shown. The *Perry* case decided that, as Chief Justice Hughes said, the pledged credit of the United States is not an "illusory pledge," to be defeated at the convenience of the obligor, but that morally and legally, the bonds are binding, and that the defendant must pay the actual damages suffered for breach of the contract, as in other breach of contract cases (*Becker Steel Co.* v. *Cummings,* 296 U. S. 74; *Russian Volunteer Fleet* v. *United States,* 282 U. S. 481; *United States* v. *Lynah,* 188 U. S. 445).

Conclusion

As both Chief Justice Hughes and Justice McReynolds said in the *Perry* case, the pledged word of our Government should not be used in a manner to cause damage to one who relied on our "plighted faith". The nations of the world are now trying desperately to arrive at agreements which will permit all people to live in peace and harmony. We have enacted national laws and have given moral encouragement to United Nations Organization promises and arrangements for monetary security and stability. We respectfully suggest that there can be no peaceful and satisfactory relations between nations unless the nations of the world have faith in the pledged word of governments. Nor need we remind this Court that we, the greatest creditor Nation on earth, have immeasurable treasure to lose if other nations will in the future refuse to honor the standards of payment which they have promised to the United States. And it goes without saying that Democracy seeks to set an example for new governments now forming. So far as our search has indicated, this is the only case in which a friendly alien has asked this Court for protection against loss for having relied upon a security of the United States.

We have shown that the First Liberty Loan Bonds were contracts of the Government and that the Government should

pay the damages to the plaintiff for the actual loss suffered because of the breach. For the reasons stated, it is respectfully submitted that the petition for certiorari should be allowed.

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APPENDICES

Appendix 1

"(b) In any case in the Court of Claims, including those begun under Section 287, it shall be competent for the Supreme Court, upon the petition of either party, whether Government or Claimant, to require by certiorari, that the cause, including the findings of fact and the judgment or decree, but omitting the evidence, be certified to it for review and the determination with the same power and authority, and with like effect, as if the cause had been brought there by appeal." * * * (Feb. 13, 1925, c. 229, Sec. 3, 43 Stat. 939; U. S. C. A. Tit. 28, Sec. 288).

Appendix 2

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury, with the approval of the President, is hereby authorized to borrow, from time to time, on the credit of the United States for the purposes of this Act, and to meet expenditures, authorized for the national security and defense and other public purposes authorized by law not exceeding in the aggregate $5,000,000,000, etc. * * *

"The principal and interest thereof shall be payable in United States gold coin of the present standard of value and shall be exempt, both as to principal and interest, from all taxation, except estate or inheritance taxes, imposed by authority of the United States or its possessions, by any State or local taxing authority, but such bonds shall not bear the circulation privilege." Approved April 24, 1917. 40 Stat. at Large 35.

"Sec. 3. That, notwithstanding the provisions of the Second Liberty Bond Act or of the War Finance Corporation Act or of any other Act, bonds, notes, and certificates of indebtedness of the United States and bonds of the War Finance Corporation shall, while beneficially owned by a non-resident alien individual, or a foreign corporation, partnership, or association, not engaged in business in the

United States, be exempt both as to principal and interest from any and all taxation now or hereafter imposed by the United States, any State, or any of the possessions of the United States or by any local taxing authority." Approved March 3, 1919; 40 Stat. at Large 1311.

Appendix 3

No gold shall after January 30, 1934, be coined and no gold coin shall after January 30, 1934, be paid out or delivered by the United States: Provided, however, That coinage may continue to be executed by the mints of the United States for foreign countries in accordance with section 367 of this title. All gold coin of the United States shall be withdrawn from circulation, and, together with all other gold owned by the United States, shall be formed into bars of such weights and degree of fineness as the Secretary of the Treasury may direct. (Jan. 30, 1934, c. 6, P 5. 48 Stat. 340.)

Appendix 4

Section 1. Every transaction in foreign exchange, transfer of credit between any banking institution within the United States and any banking institution outside of the United States (including any principal, agent, home office, branch, or correspondent outside of the United States of a banking institution within the United States), and the export or withdrawal from the United States of any currency or silver coin which is legal tender in the United States, by any person within the United States, is hereby prohibited, except under license therefor issued pursuant to this Executive order: Provided, however, That, except as prohibited under regulations prescribed by the Secretary of the Treasury, foreign exchange transactions and transfers of credit may be carried out without a license for (a) normal commercial or business requirements, (b) reasonable traveling and other personal requirements, or (c) the fulfillment of legally enforceable obligations incurred prior to March 9, 1933. Executive Order No. 6560, Section 1. (Tit. 12, Sec. 95 a, P. 454, 5, U. S. C. A.)

Appendix 5

"Whereas, by virtue of section 1 of the act of Congress aproved March 14, 1900 (31 Stat. L. 45), the present weight of the gold dollar is fixed at 25.8 grains of gold nine tenths fine; and . . .

"Now, therefore, be it known that I, Franklin D. Roosevelt, President of the United States, by virtue of the authority vested in me by section 43, title III of said act of May 12, 1933, as amended, and by virtue of all other authority vested in me, do hereby proclaim, order, direct, declare, and fix the weight of the gold dollar to be 15 5/21 grains nine tenths fine, from and after the date and hour of this proclamation. The weight of the silver dollar is not altered or affected in any manner by reason of this proclamation.

"This proclamation shall remain in force and effect until and unless repealed or modified by act of Congress or by subsequent proclamation; and notice is hereby given that I reserve the right by virtue of the authority vested in me to alter or modify this proclamation as the interest of the United States may seem to require. . . ." (Proclamation No. 2072, Jan. 31, 1934, 48 Stat. 1730, Title 31, Sec. 821, U. S. C. A.)

Appendix 6

773b. Same; withdrawal of consent to sue United States; exceptions. Any consent which the United States may have given to the assertion against it of any right, privilege, or power whether by way of suit, counterclaim, set-off, recoupment, or other affirmative action or defense in its own name or in the name of any of its officers, agents, agencies, or instrumentalities in any proceeding of any nature whatsoever (1) upon any gold clause securities of the United State or for interest thereon, or (2) upon any coin or currency of the United States, or (3) upon any claim or demand arising out of any surrender, requisition, seizure, or acquisition of any such coin or currency or of any gold or silver and involving the effect or validity of any change in the metallic content of the dollar or other regulation of the value of money, is withdrawn: Provided, That this

section shall not apply to any suit heretofore commenced or which may be commenced by January 1, 1936, or to any proceeding referred to in this section in which no claim is made for payment or credit in an amount in excess of the face or nominal value in dollars of the securities, coins or currencies of the United States involved in such proceeding. (Aug. 27, 1935, 6:00 p. m., E. S. T., c. 7802, 49 Stat. 939.)

Appendix 7

Sec. 5. For the purpose of carrying into effect the provisions of the Act entitled, "An Act to authorize annual appropriations to meet losses sustained by officers and employees of the United States in foreign countries due to appreciation of foreign currencies in their relation to the American dollar, and for other purposes," approved March 26, 1934, and for each and every object and purpose specified therein, to be immediately available, $7,438,000. Approved May 30, 1934. 48 Stat. 817, at P. 834, 73rd Congress, Sess. II, ch. 372.

This Act gave authority to the President to allow and upon recommendation of the Director of the Budget, "to meet losses sustained on and after July 15, 1933, by officers, enlisted men, and employees of the United States while in service, in foreign countries due to the appreciation of foreign currencies in relation to the American dollar, and to cover deficiency in the accounts of the Treasurer of the United States, including interest, arising out of the arrangement approved by the President on July 27, 1933, for the conversion into foreign currencies of checks and drafts of officers, enlisted men, and employees for salaries and expenses. . . ."

"Allowances and expenditures pursuant to this Act shall not be subject to income taxes." App. March 26, 1934. 48 Stat. 466, Public #129.